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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,026	08/31/2001	Dennis L. Keiser	W-3749	8524
20995	7590	01/27/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			HWANG, VICTOR KENNY	
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FOURTEENTH FLOOR			ART UNIT	PAPER NUMBER
IRVINE, CA 92614			3764	

DATE MAILED: 01/27/2004  
8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/945,026	KEISER, DENNIS L.
	Examiner Victor K. Hwang	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 September 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 26-33 and 35-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 26-33, 35-46 and 58-64 is/are allowed.
- 6) Claim(s) 47-53, 56, 57, 65 and 66 is/are rejected.
- 7) Claim(s) 54 and 55 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 22, 2003 has been entered.

### ***Drawings***

2. The proposed drawing correction for Fig. 1, filed September 22, 2003, is approved.

### ***Specification***

3. The disclosure is objected to because of the following informalities:  
in the amendment filed September 22, 2003, the numerals and periods at the beginning of the 2<sup>nd</sup> to 6<sup>th</sup> and 8<sup>th</sup> to 10<sup>th</sup> replacement paragraphs presumably should be deleted.  
Appropriate correction is required.

### ***Claim Objections***

4. Claims 27, 28 and 55 are objected to because of the following typographical errors:  
in claim 27, line 2, "upper" presumably should be replaced with --first--;  
in claim 28, line 2, "portion" presumably should be deleted; and

in claim 55, line 1, "47" presumably should be replaced with --54--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 47-50 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by *Piane, Jr. et al.* (US Pat. 5,102,122). *Piane, Jr. et al.* discloses an exercise apparatus comprising a stationary frame portion 82 or 106 including an operator support. The planar portion of the stationary frame portion serves as the operator support where an operator may be supported. An operator assembly comprises a moveable frame portion 18 (Fig. 3B), 80 (Fig. 5), or 100,102 (Fig. 6) being moveable relative to the stationary frame portion from between at least a first position and a second position along an arcuate path 12, 86 or 104. Operator engagement portions 30,88,90 are configured to move relative to both the moveable frame portions and the operator support. A weight resistance assembly is configured to provide resistance to the movement of the engagement portion in at least one direction.

The moveable frame portion is supported by an arcuate track 16,86,104. The arcuate track 16 comprises generally parallel first and second arcuate track members 16a and 16b. In Figs. 5 and 6, the arcuate track followed by the operator engagement portions is not identified by a reference character, but is analogous to that in Figs. 1-4, and define an arc substantially

concentric to a first reference position of the operator's station. The operator engagement portions 30,88,90 are configured for pivotal movement relative to the moveable frame portion of the operator input assembly. In a first position of the moveable frame, the operator engagement portion is moveable along a first exercise path relatively parallel to the operator support and in a second position of the moveable frame, the operator engagement portion is moveable along a transverse second exercise path, the second exercise path not being aligned with the first exercise path.

7. Claims 47, 48, 50, 51, 53 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by *Carlson* (US Pat. 4,720,099). *Carlson* discloses an exercise apparatus comprising a stationary frame portion 5 including an operator support 22. An operator input assembly 2 comprises a moveable frame portion 66 being moveable relative to the stationary frame portion from between at least a first position and a second position along an arcuate path. An operator engagement portion, for example handle 147, is configured to move relative to both the moveable frame portion and the operator support. A resistance assembly 62 is configured to provide resistance to the movement of the engagement portion in at least one direction.

The moveable frame portion is supported by an arcuate track assembly 6. The operator engagement portion is configured for pivotal movement relative to the moveable frame portion of the operator input assembly. The resistance assembly is configured to provide resistance independent of gravitational forces. The operator support can be configured so that a contact surface for supporting an operator is on a first side of the operator support and the arcuate path

is located on a second side of the operator support, opposite the first side. In the first position of the moveable frame, the operator engagement portions is moveable along a first exercise path relative to the operator support and, in the second position of the moveable frame, the operator engagement portion is moveable along a second exercise path, the second exercise path not being aligned with the first exercise path. A hand driven mechanism 90 operates between the stationary frame and the moveable frame to move the moveable frame along the arcuate path.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 47-52, 57, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Piane, Jr. et al.* (US Pat. 5,102,122). *Piane, Jr. et al.* has been discussed above, and such discussion is incorporated herein. *Piane, Jr. et al.* discloses the invention as claimed except for the resistance assembly configured to provide resistance independent of gravitational forces (claim 51); the resistance assembly comprising a pneumatic cylinder assembly having a piston enclosed within a cylinder (claim 52); and at least one pneumatic resistance device (claim 65).

*Piane, Jr. et al.* discloses that resistance sources other than the weight stack resistance can be used. These other resistance sources include pneumatic or hydraulic cylinders and electronic brakes or stepper motors (col. 3, lines 45-48). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide substitute the weight stack resistance assembly of *Piane, Jr. et al.* with a pneumatic cylinder resistance source, since *Piane, Jr. et al.* teaches that pneumatic resistance sources can be used in place of the weight stack resistance.

10. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Piane, Jr. et al.* (US Pat. 5,102,122), as applied to claim 47 above, and further in view of *Cook* (US Pat. 5,018,725). *Piane, Jr. et al.* discloses the invention as claimed except for the operator support defines a contact surface for supporting an operator on a first side of the operator support, and the arcuate path is located on a second side of the operator support, opposite the first side.

*Cook* discloses an exercise apparatus comprising an operator support 18 defining a contact surface for supporting an operator on a first side of the operator support, and an arcuate path 44,45 is located on a second side of the operator support, opposite the first side. The operator support 18 prevents movement of the body during exercise, such as in the execution of a horizontal pull.

It would have been obvious to one having ordinary skill in the art at the time the invention made to provide the operator support of *Piane, Jr. et al.* with the operator support of *Cook*, in order to prevent movement of the body during exercise so as to permit execution of a horizontal pull, for example.

11. Claims 47, 48, 50, 51, 53, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Carlson* (US Pat. 4,720,099). *Carlson* has been discussed above, and such discussion is incorporated herein. *Carlson* discloses the invention as claimed except for a motor powering the drive mechanism (claim 56). The replacement of a manual operation with an automatic operation is a design consideration within the skill of the art. *In re Venner*, 262 F.2d 91, 120 USPQ 192 (CCPA 1055).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a motor for the drive mechanism, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. A motor is notoriously well known in the art for driving previously manually driven mechanisms, in order to provide automatic operation.

***Allowable Subject Matter***

12. Claims 26-33, 35-46 and 58-64 are allowed.

13. Claims 54 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting all formal correspondence is (703) 872-9306.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHETTI  
SUPERVISORY SPECIALIST  
TECHNOLOGY CENTER 3700



Victor K. Hwang  
January 13, 2004